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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,718	12/03/2003	Shi-Qiu Zhang	F6181(C)	6371

201 7590 07/23/2007  
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EXAMINER
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PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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07/23/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/726,718	<b>Applicant(s)</b> ZHANG ET AL.	
	<b>Examiner</b> Helen F. Pratt	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,5-14,16-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-14,16-18 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

**The finality of the last office action has been removed in favor of the instant office action.**

#### ***Claim Objections***

Claim 6 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 6 contains tea, which is already in claim 1.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-14, 16-18, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (US 2006/0275506 A1) or Lehmberg et al. (6,423,361).

Fisher et al. disclose a beverage composition containing tea and water and leucine hydrochloride (abstract and 0041, 0066).

Lehmberg et al. disclose a beverage composition containing tea solids in the claimed amounts, water and phosphoric acid (abstract and col. 6, lines 50-65).

Claim 1 differs from the references in the use of a particular pKa1 and pKa2. However, as the claimed polyprotic agents have been disclosed, it is seen that the

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pKa's are within the claimed range. Therefore, it would have been obvious to use antimicrobial agents, which have the claimed pKa's since the claimed agents have been shown.

No mention is seen of citric acid in the references as in claims 5 and 16.

Tea is shown as in claim 6.

The particular amounts of tea solids as in claims 7-9 are disclosed in paragraph 0111 of Fisher et al. and col. 6, lines 50-65, and in col. 8, lines 53-64 of Lehmberg et al.

Whether the beverage is sweetened or carbonated as in claims 10 and 11 is seen to have been within the skill of the ordinary worker. Fischer et al. disclose a tea beverage, which does not contain sweeteners nor is carbonated (0111), and Lehmberg et al. disclose the same (col. 6, lines 50-70).

Claim 12 further requires a pH of between 2.75 and 5.0. Lehmberg et al. disclose a pH of 4.2 (col. 6, lines 50-70). Nothing is seen that the composition of Fischer would not have the claimed pH (0018, 0111, 0112). Therefore, it would have been obvious to make a product containing the claimed pH as disclosed by the references.

Claim 13 further requires that the beverage be treated at a particular temperature. However, this is a process limitation in a composition claim and is not given weight. In addition, the thermal treatment of beverages is well known and it would have been within the skill of the ordinary worker to use proper pasteurization temperatures. Therefore, it would have been obvious to treat a beverage at a particular temperature in order to make it food safe.

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Claim 14 further requires particular types of packaging, which cover the entire gamut of beverage packaging. The packaging of tea in glass bottles is well known. Also, Fisher et al. disclose that the composition can be packaged (0018). Therefore, it would have been obvious to package the composition of the reference in known types of packaging.

Fisher et al. disclose mixing tea with hot water (0111). The mixture can contain free leucine, which can be used in the hydrochloride form as above. The composition can be packaged (0067). Nothing new is treating a beverage to make it microbiologically stable. Lehmberg et al. disclose heating a concentrate containing water, tea and an acidulant (phosphoric acid) to 160 F. (claim 8 and col. 6, lines 50-65). The claimed composition has been shown above. Therefore, it would have been obvious to treat a beverage with heat to make it microbiologically stable.

The limitations of claims 18 and 20 have been disclosed above and are obvious for those reasons.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 7-18-07

  
HELEN PRATT  
PRIMARY EXAMINER